The offences committed by the appellants are serious offences. Criminal breach of trust by an agent carries a severe penalty – imprisonment for life, or with imprisonment for a term which may extend to ten years and also a fine. The amount involved is very substantial. The appellants between them had dishonestly misappropriated $534,800. They did this over a period from January 1981 to March 1982. No restitution has been made.

I am of the view that a custodial sentence is called for in this case. I do not find that the sentences imposed by the trial court are manifestly excessive.

In the result these appeals are dismissed.

Appeals dismissed.

Solicitors: *Peter Yap & Co*; *Leo Fernando*.

Reported by *PS Ranjan*

Hawa bte Haji Mohamed Hussain v CJ Miranda

HIGH COURT (SINGAPORE) – MAGISTRATE'S APPEAL NO 463 OF 1985
LAI KEW CHAI J
30 AUGUST 1988

Criminal Procedure – Respondent convicted on private summons brought by appellant – Dissatisfied appellant appealed against sentence passed on respondent – Public Prosecutor intervening to withdraw appeal – Whether appellant has right of appeal and right of audience – Whether Public Prosecutor has control and direction of criminal prosecutions – Discretion entrenched in art 35(8) of Singapore Constitution – Criminal Procedure Code (Cap 68, 1985 Ed), ss 247(1), 336(1), (8) – Constitution of the Republic of Singapore, art 35(8)

The respondent was tried and convicted of the offence of voluntarily causing hurt to the appellant. The magistrate gave him a conditional discharge for one year. Not satisfied with what she considered to be a manifestly inadequate sentence, the appellant (who originally brought the private summons against the respondent) filed a notice of appeal under s 247(1) of the Criminal Procedure Code (Cap 68, 1985 Ed) ('the Code'). At the commencement of the hearing of the appeal, the deputy public prosecutor appeared and submitted that the notice of appeal should be rejected and that the Public Prosecutor was intervening to withdraw the appeal. The Public Prosecutor relied on art 35(8) of the Constitution for his submission, adding that s 247(1) of the Code should be read with s 336(1). The appellant, on the other hand, contended that on a reading of s 247(1), the appellant, being a 'party' to the criminal matter below, should not only have the right of appeal but a right of audience either by herself in person or by counsel.

Held, dismissing the appeal:

The Public Prosecutor under s 336(1) of the Criminal Procedure Code has 'the control and direction of ... proceedings under the Criminal Procedure Code and since the appeal before the court is a proceeding under the Criminal Procedure Code, the Public Prosecutor could properly in his discretion intervene and withdraw the appeal. His discretion is entrenched in art 35(8) of the Constitution.

Case referred to

1 *Ponniah* v *Lim* [1960] MLJ 152 (refd)

Legislation referred to

Constitution of the Republic of Singapore art 35(8)
Criminal Procedure Code (Cap 68, 1985 Ed) ss 128(1)(a), 129-132, 133(1), 247(1), 249, 336(1), (4), (5), (6), (8)
Legal Profession Act (Cap 161, 1985 Ed) s 28(1)

B Ganesh for the appellant.
Rajan Nair for the respondent.
Ismail Hamid for the Public Prosecutor.

Cur Adv Vult

Lai Kew Chai J: In Magistrate's Appeal No 463 of 1985 the petitioner, Hawa bte Haji Hussain, who brought a private summons against the respondent, appealed against the sentence on the ground that it was manifestly inadequate. The respondent was tried and convicted of the offence of voluntarily causing hurt to the appellant. The magistrate gave him a conditional discharge for one year from 22 November 1985. The proceedings were taken pursuant to a complaint under s 128(1)(a) of the Criminal Procedure Code (Cap 68, 1985 Ed) ('the Code') which complaint was examined under s 133(1) of the Code. Since the restrictions imposed by ss 129 to 132 of the Code did not apply, the appellant as the complainant was represented by counsel who appeared under s 28(1) of the Legal Profession Act (Cap 161, 1985 Ed).

Not satisfied with what she considered to be a manifestly inadequate sentence, the appellant who was only the complainant in the case filed a notice of appeal under s 247(1) of the Code which, being important for present purposes, is reproduced below:

> Subject to sections 242, 244 and 245 any person who is dissatisfied with any judgment, sentence or order pronounced by any District Court or Magistrate's Court in a criminal case or matter to which he is a party may prefer an appeal to the High Court against that judgment, sentence or order in respect of any error in law or in fact or, in an appeal against sentence, on the ground that the sentence imposed is manifestly excessive or inadequate by lodging within 10 days from the time of the judgment, or order being passed or made, with the Registrar of the Subordinate Courts at the court house at which the trial was held, a notice of appeal in triplicate addressed to the High Court.

Counsel for the appellant then referred to s 249 of the Code and contended that the Magistrate's Court was only obliged to, as it did, transmit to the respondent a signed copy of the record of proceedings and of the grounds of decision together with a copy of the notice and of the petition of appeal. The Public Prosecutor was not served with the papers. Counsel for the appellant stressed the disjunctive in s 249 of the Code which reads as follows:

> When section 247 has been complied with, the court appealed from shall transmit to the High Court and to the Public Prosecutor or to the respondent or his advocate, as the case may be, a signed copy of the record of the proceedings and of the grounds of the decision together with a copy of the notice and of the petition of appeal.

At the commencement of the hearing of the appeal, the deputy public prosecutor appeared and submitted that the notice of appeal should be rejected by this court and that, at any rate, the Public Prosecutor was intervening to withdraw the appeal. He relied on cl 8 of art 35 of the Constitution of the Republic of Singapore which provides:

> The Attorney General shall have power, exercisable at his discretion, to institute, conduct or discontinue any proceedings for any offence.

He then submitted that the appeal being a criminal matter it did not follow that the appellant nor her counsel had any right to appear to argue the appeal. He submitted that s 247(1) of the Code should be read with s 336 of the Code, sub-s (1) of which reads:

> The Attorney General shall be the Public Prosecutor and shall have the control and direction of criminal prosecutions and proceedings under this Code.

It is also relevant for present purposes to reproduce below s 336(4), (5), (6) and (8) of the Code:

> (4) The Public Prosecutor or the Solicitor General or a person appointed a deputy under subsection (3) may authorize any advocate to act for him as Public Prosecutor in the conduct of any case or prosecution in court or in any part of such conduct.
>
> (5) Every criminal prosecution before the High Court shall be conducted by the Public Prosecutor or by the Solicitor General or by a deputy appointed under subsection (3) or by an advocate authorized under subsection (4).
>
> (6) No person shall appear on behalf of the Attorney General in any criminal appeal or on any point of law reserved under Chapter XXIX other than the Public Prosecutor or the Solicitor General or a deputy appointed under subsection (3) or an advocate authorized under subsection (4).
>
> .....
>
> (8) Nothing in this section shall be held to preclude private persons or any officer of any government department from appearing in person or by advocate to prosecute in summary cases before a Magistrate's Court or in summary non-seizable cases before a District Court.

It will be seen that s 336(8) enables a private person to appear in person or by his counsel to prosecute in a summary case before a Magistrate's Court, as was what had happened in this case.

Counsel for the appellant contended that s 336(8) of the Code is a saving section and not an enabling section and that on a reading of s 247(1) the appellant, being a 'party' to the criminal matter below, should not only have the right of appeal but a right of audience either by herself in person or by counsel.

In my view, the Public Prosecutor under s 336(1) of the Code has 'the control and direction of ... proceedings under' the Code and since the appeal before me is a proceeding under the Code, the Public Prosecutor could properly in his discretion intervene and withdraw the appeal. His discretion is entrenched in art 35(8) of the Constitution. Further, as a matter of principle, it must be recognized, as it was in *Ponniah* v *Lim*,[1] that the interests of the state in a criminal matter which are entrusted to the Public Prosecutor are not always the same as those of a complainant who may allow his 'private passions and prejudices to creep into the conduct' of a criminal appeal.

The appeal is accordingly dismissed.

Appeal dismissed.

Solicitors: *Lim Ganesh & Liu*; *Rajan Nair.*

Reported by *Ng Sheau Jiuan*

Tan Ah Kwee v Region Development Pte Ltd

HIGH COURT (SINGAPORE) – SUIT NO 177 OF 1988
CHAO HICK TIN JC
22 AUGUST 1988

Civil Procedure – Discharge of interim injunction given to plaintiff – Application for – Plaintiff alleged ownership of premises – Defendants were bona fide purchasers in good faith – Whether defendants affected by alleged equity of plaintiff – Whether there exists serious question to be tried – Whether damages would be adequate remedy – Balance of convenience

The plaintiff claimed for an injunction to restrain the defendants from damaging or demolishing the building comprising premises known as 4R, 4S and 4T, and damages. The plaintiff alleged that he was the owner of the structures of premises 4R, 4S and 4T and that he had been residing at 4S for more than 25 years prior to the commencement of the action. An interim injunction was granted to the plaintiff. The defendants, as the purchasers and new owners of the land, now apply to have the interim injunction discharged or, alternatively, the injunction to be discharged in so far as premises 4R and 4T were concerned.

Held, allowing the defendants' application to discharge the interim injunction:

(1) The general rule is that it is not for the court at this stage of the proceedings to resolve a conflict of evidence on affidavits as to facts. But where on the plaintiff's own evidence nothing was shown that he was the owner of the structures of premises 4R, 4S and 4T and where he has also failed to show in any respect that the defendants' rights as a bona fide purchaser in good faith of the said land were affected by the alleged equity of the plaintiff, there was accordingly no serious question to be tried.

(2) The claim based on ownership of the structures was frivolous. The plaintiff had no equity enforceable against the